

**ORIGINAL**

**IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

FILED  
2005 MAR -3 PM 2:03

VESNA ANUSIC

VS.

SODEXHO, INC.,  
AND ABEL RIOS§  
§  
§  
§  
§  
§

CIVIL ACTION NO.

**A05CA145 SS**

**DEFENDANT SODEXHO, INC. 'S  
NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Sodexho, Inc. ("Sodexho") hereby removes to this Court the above-captioned state court civil action pending in the District Court of Travis County, Texas, 98th Judicial District, Austin, Texas.

**GROUND FOR REMOVAL**

1. On or about February 26, 2004, the plaintiff, Vesna Anusic ("Anusic"), filed Action No. GN-400626 in the District Court of Travis County, Texas, 98th Judicial District. The Original Petition and Citations were served on the defendants Sodexho, Abel Rios ("Rios"), and Daughters of Charity Health Services of Austin d/b/a/ Seton Healthcare Network ("Seton") on or about February 27, 2004. True and accurate copies of the Original Petition and Citation served on Sodexho are attached hereto as Exhibit 1.

2. On or about February 3, 2005, the plaintiff filed her First Amended Petition with the court and served the amended petition on defendant Sodexho. A true and accurate copy of Plaintiff's First Amended Petition ("Amended Petition") is attached hereto as Exhibit 2. Upon information and belief, Plaintiff's Amended Petition was served on Defendant Rios at the same time via U.S. mail, however, the Amended Petition was sent to an address at which Defendant Rios no longer resides. As such, Defendant

Sodexho cannot confirm that proper service was made on Defendant Rios. Anusic subsequently filed a Notice of Non-Suit with Prejudice against Defendant Seton on February 11, 2005. A true and accurate copy of Plaintiff's Notice of Non-Suit with Prejudice against Defendant Seton is attached hereto as Exhibit 3.

3. The Plaintiff's First Amended Petition includes new causes of action against Defendant Sodexho for retaliation and sexual harassment (hostile work environment and *quid pro quo*) in violation of both Title VII of the Civil Rights Act of 1964 and the Texas Commission on Human Rights Act. The Amended Petition also includes a new cause of action against Defendants Sodexho and Rios for discrimination in violation of the Civil Rights Act of 1886, codified at 42 U.S.C. § 1981. The Amended Petition also includes the following causes of action against Defendants Sodexho and/or Rios: assault & battery, negligent training and supervision, negligent retention, gross negligence, false imprisonment, and intentional infliction of emotional distress.

4. Although the original petition was filed and served in February 2004, defendant Rios has not filed a responsive pleading or made an appearance in this matter.

5. The action is one over which the United States District Courts have original jurisdiction pursuant to 28 U.S.C. § 1331 as the Plaintiff's Amended Petition alleges four causes of action arising under the laws of the United States (Title VII and Civil Rights Act of 1866 codified at 42 U.S.C. § 1981).

6. Since Plaintiff Anusic served the amended petition on Defendant Sodexho on February 3, 2005, Sodexho has exhausted all reasonable efforts to contact Defendant Rios in order to inquire as to whether Rios would consent to remove this state court civil action to federal court.

7. Specifically, during the time period of February 3rd - February 28th, 2005, Defendant Sodexho has contacted Defendant Rios directly at his home, current place of employment, and through counsel Rios retained to represent him in the event the underlying assault allegations result in criminal charges against him.

8. As a result of these efforts, Sodexho and Rios agreed to meet on four separate occasions between February 24th and February 28th, 2005, to discuss the possibility of removal. On each occasion, Defendant Rios and/or Rios' criminal counsel failed to attend any of the scheduled meetings or provide any explanation for their absence. Defendant Rios has failed to respond to any and all subsequent efforts to contact him and inquire as to whether he would consent to removal of this action to federal court. Thus, despite Sodexho's exhaustive efforts to obtain Rios consent, as of the date of this notice of removal, defendant Rios' consent is absent from this notice because Sodexho has been unable to meet with Rios and determine his position on this issue.

9. Pursuant to 28 U.S.C. § 1441(c), removal of all of the Plaintiff's claims is proper, even without Rios' consent, as Plaintiff's Amended Petition includes at least one separate and independent claim against Sodexho asserting a federal question (i.e., Plaintiff's federal claims including, but not limited to Plaintiff's Title VII retaliation claim).

10. Plaintiff's Amended Petition includes claims which assert multiple wrongs against two different defendants, Sodexho and Rios, and the claims are not contingent upon each other.

11. Alternatively, removal is also proper in this instance because Defendant Rios has not been properly served with the Amended Petition.

12. In addition, pursuant to 28 U.S.C. § 1367 and/or 28 U.S.C. § 1441(c), the federal court has supplemental jurisdiction over all of Plaintiff's additional claims filed against either Sodexho and/or Rios.

13. A copy of this Notice will be filed with the Clerk at the District Court, Travis County, Texas, as required by 28 U.S.C. § 1446(d).

14. Written notice of the filing of this Notice of Removal will be given to the adverse party as required by 28 U.S.C. § 1446(d).

15. Pursuant to 28 U.S.C. § 1446(a), Defendant files herewith true and correct copies of all processes, pleadings, and orders served upon Defendant in this case, along with a certified copy of the docket sheet, all attached hereto as Exhibit 4.

Respectfully Submitted,

*Melody M. Wilkinson / by permission*

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**ATTORNEYS FOR DEFENDANT,**

**SODEXHO, INC.**

**CERTIFICATE OF SERVICE**

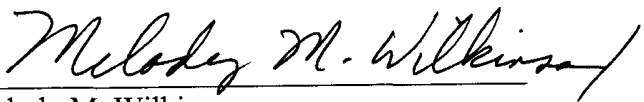

I hereby certify that a true and correct copy of Defendant Sodexho, Inc.'s Notice of Removal was served on all parties of record on this 3<sup>rd</sup> day of March, 2005 in the following manner:

**Via HAND DELIVERY**

Paul Schorn  
Broadus Spivey  
48 East Avenue  
Austin, Texas 78701

**Via CMRRR #7002 3150 0004 6546 4333**

Abel Rios  
102 Paia Lane  
Bastrop, Texas 78602

  
Melody M. Wilkinson  
by permiss  
  
SBN 00790343

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**Notice of Document/Attachment(s) Not Imaged  
and Contained in Expandable Folder**

**See Expandable File(s) to View/Copy  
Document/Attachment(s)**

Civil Case No. 1:05CV145-SS

Vesna Anusic

VS.

Sodexho, Inc., et. al.

Attachments to  
Document #: 1

Description: Attachments to Notice of Removal

File Date: March 3, 2005

Prepared by: JK

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